IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

THE JOHNS HOPKINS UNIVERSITY, Plaintiff, v. ALCON LABORATORIES, INC. and ALCON RESEARCH, LTD., Defendants.	)	Civil Action No. 15-525-LS-SRF

ORDER

At Wilmington this 12th day of **April, 2018**,

WHEREAS, on March 1, 2018, the undersigned judicial officer entered a Report and Recommendation recommending, in pertinent part, that the court grant-in-part the plaintiff The Johns Hopkins University's ("JHU") motion for summary judgment regarding Alcon's obviousness defense (D.I. 294 at 55-57);

WHEREAS, on March 15, 2018, counsel for defendants Alcon Laboratories, Inc. and Alcon Research, Ltd. (collectively, "Alcon") filed a motion for clarification regarding the March 1, 2018, Report and Recommendation's obviousness recommendation, asserting that the Report and Recommendation should be construed to limit Alcon's obviousness combinations to the four disclosed primary prior art references, and should not limit the number of secondary references used only for background purposes (D.I. 299);

WHEREAS, on March 22, 2018, JHU responded that the court's March 1, 2018 Report and Recommendation should be construed to recommend granting summary judgment on all obviousness references except for the four unchallenged references identified in prior art combinations in the expert reports (D.I. 306);

WHEREAS, Alcon's motion for clarification was fully briefed on March 29, 2018 (D.I. 312);

NOW THEREFORE, IT IS HEREBY ORDERED that Alcon's motion for clarification is GRANTED. The court's March 1, 2018 Report and Recommendation regarding JHU's motion for summary judgment on Alcon's obviousness defense was intended to limit Alcon's assertion of prior art references for use in obviousness combinations to those combinations expressly identified in the expert reports.[1] The Recommendation was not intended to preclude the use of prior art references as background references illustrating, for example, the state of the art, the knowledge possessed by the person of ordinary skill in the art, and to rebut secondary considerations.

Sherry R. Fallon
United States Magistrate Judge

[1] Specifically, the four prior art references which may be used in obviousness combinations in accordance with the disclosures made in the expert reports are: Machemer 1985, Chen 1996, Josephberg '363, and Cozean '831.